



**West Virginia
Domestic Violence
Response Guide
for
Law Enforcement
Officers**

3rd Edition

Legislative Rule Title 149

Sylluabus by the Court

- “A regulation that is proposed by an agency and approved by the Legislature is a “legislative rule” as defined by the State Administrative Procedures Act, *W. Va. Code*, 29A-1-2(d) [1982], and such a legislative rule has the force and effect of law.” Syl. Pt. 5, *Smith v. W.Va. Human Rights Comm’n*, 216 W. Va. 2, 602 S.E.2d 445 (2004).
- “Once a disputed regulation is legislatively approved, it has the force of a statute itself. Being an act of the West Virginia Legislature, it is entitled to more than mere deference; it is entitled to controlling weight. As authorized by legislation, a legislative rule should be ignored only if the agency has exceeded its constitutional or statutory authority or is arbitrary or capricious.” Syl. Pt. 2, *W. Va Health Care Cost Review Auth. v. Boone Mem’l Hosp.*, 196 W. Va. 326, 472 S.E.2d 411 (1996).

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West Virginia Response Guide for Law Enforcement Officers

Purpose

- Protect victims of domestic violence through enforcement of protective orders, initial response, and arrest, on-scene assistance, reporting and follow-up.
- Minimize departmental liability and provide training.
- Reduce the incidence and severity of domestic violence by establishing arrest and prosecution, as the means of police response to domestic violence.
- Afford maximum protection and support to victims of domestic violence through a coordinated response of law enforcement and victim assistance.
- Ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases.
- Promote law enforcement officer safety by ensuring that the law enforcement officer is as fully prepared as possible to respond to domestic calls.
- Help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

Definitions

Family Violence/Domestic Violence/Abuse

The occurrence of one or more of the following acts between family or household members:

- a) Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another person with or without dangerous or deadly weapons.
- b) Placing another person in reasonable apprehension of physical harm.
- c) Creating fear of physical harm by harassment, stalking, psychological abuse, or threatening acts.
- d) Committing either sexual assault or sexual abuse.
- e) Holding, confining, detaining, or abducting another person against that person's will.

Domestic Assault

The unlawful attempt to commit a violent injury of another family or household member or unlawfully committing an act which places another family or household member in reasonable apprehension of immediately receiving a violent injury.

Domestic Battery

The unlawful and intentional physical contact of an insulting or provoking nature with another family or household member or unlawfully and intentionally causing physical harm to another family or household member.

Family or Household Member

- a) Current or former spouses
- b) Persons living as spouses or who have formerly resided as spouses
- c) Current or former sexual or intimate partners
- d) Persons who are dating or who have dated
- e) Persons who are presently or in the past have resided together in the same household
- f) Persons who have a child in common
- g) Parents and stepparents
- h) Siblings (full, half, and step)
- i) In-laws (including step)
- j) Children and stepchildren
- k) Grandparents, aunts, uncles (including step)
- l) Nieces, nephews, first and second cousins

Firearm

Any weapon that will expel a projectile by action of an explosion.

Protective Orders

- A protective order is an injunction or other order, issued under domestic violence, family violence, antistalking, or similar domestic relations laws.
- A protective order is issued to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to a protected individual.
- A protective order must be issued by a court; agency or other entity authorized by law to issue or modify a protective order.
- Protective orders include, but are not limited to, Emergency Protective Orders, Temporary Emergency Protective Orders, Domestic Violence Protective Orders, Temporary or Final Protective Orders issued as a part of Temporary or Final Divorce Orders, or any other terms or orders that have a similar purpose.
- Domestic violence protective orders are considered **criminal** in nature.
- Law enforcement agencies and officers are responsible for the service of all orders and petitions for protection. **Service of protective orders shall be a priority.**
- Officers shall immediately, but **no longer than 72 hours**, make every reasonable effort to locate respondent for service of protective orders. Service shall be performed on any day including Sundays and holidays.
- **No officer shall refuse to serve** pleadings or orders in domestic violence protective order actions and **file the return of service within 24 hours** to the circuit clerk's office.

- **When serving the protective order:**
 - Inform the respondent that possession of firearms and ammunition is **prohibited** under state and federal law.
 - Ask of the respondent whether the respondent owns or possesses firearms and where the firearms and ammunition are located.
 - Inform the respondent that failure to surrender or transfer his or her firearms and ammunition could result in the accuser's arrest for violation of the court's order.
 - Ask of the respondent what the respondent intends to do with his or her firearms.
 - Request that the respondent **surrender all of his or her firearms and ammunition** to the officer or transfer to a qualified third party (a party who is not prohibited from possessing firearms under state and federal law).
 - Encourage the respondent to make a decision about his or her firearms while you are present to verify the surrender or transfer.
 - If the respondent refuses to surrender or transfer his or her firearms and ammunition after a reasonable opportunity to do so, then arrest the respondent for violation of the protective order.
- A protective order remains in effect for the period of time stated in the order unless the protective order is dismissed or extended by the court.

- A protective order issued in any county in West Virginia is in effect in **all counties**.
- A protection order issued by a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band that has jurisdiction to issue protection orders is accorded **full faith and credit** and enforced as if it were an order of this state, whether or not the relief ordered is available in this state, if there is probable cause to believe that it is a valid foreign protection order.
- There is probable cause to believe that a protection order is **valid** if it identifies both the protected individual and the respondent and the order appears, **on its face**, to be authentic and currently in effect.
- In circumstances whereby a written protection order is not presented, officers may consider other credible information in determining whether there is **probable cause to believe that the order exists** and is currently in effect. Presentation of a **certified copy of a protection order is not required for enforcement**.
- A protection order may be inscribed on any tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form.

- A protection order, temporary or final, from another jurisdiction may be enforced even if the order is not registered, filed or entered into the state law enforcement information system.
- If you determine that an otherwise valid protective order cannot be enforced because the respondent has not been notified of or served with the order, inform the respondent of the content of the order and make a reasonable effort to serve any available copy of the order upon the respondent. Allow the respondent a reasonable opportunity to comply with the order then enforce the order.

Initial Law Enforcement Officer Response

1. Approaching the Scene

Whenever possible, at least two law enforcement officers shall respond to a domestic call. Approach the scene of a domestic incident as one of high risk.

Obtain all available information from the dispatcher before arriving at the scene and notify the dispatcher upon arrival.

Unless the circumstances of a particular incident require different measures, you should:

- a) **Approach** the scene **inconspicuously**.
- b) **Do not use sirens or lights** in the immediate area of the scene of the incident.
- c) **Park away** from the immediate scene of the incident.
- d) Keep a **safe exit route** in mind.
- e) Be alert for the employment of **weapons** from doors, windows, or nearby vehicles.
- f) Be alert for **persons moving away** from the immediate scene of the incident.
- g) Employ other standard **precautionary measures** for approaching high risk incident scenes.

2. Initial Contact

As the responding law enforcement officer you should:

- a) **Identify** yourself.
- b) Explain the **reason** for your presence.
- c) **Request entry** into the residence or business.
- d) **Ask to see the person** who is the subject of the call.

- e) **Do not reveal the caller's name** if the person who called is someone other than the subject of the call.

3. Entry

- a) **Enter and conduct a search** of the premises relevant to the incident if written or verbal consent has been given to do so or when exigent circumstances exists.
- b) If a domestic violence protective order is in effect, **written consent** to enter may have been given by the victim and be on file.
- c) **Limit the scope of the search to other** suspects, victims, witnesses, or evidence connected with the alleged domestic incident.
- d) In some exigent circumstances, **forced entry** is necessary and appropriate. Exigent circumstances include but are not limited to:
 - 1) The residence area shows signs of a **fight or scuffle**; or
 - 2) A person from inside the residence **calls for assistance** or is yelling; or
 - 3) You have reason to believe that the **person is wounded, injured**, or is otherwise in need of assistance; or
 - 4) The accused is suspected of **concealing the victim**; or
 - 5) The call came from the residence and the victim is identified as the caller and **entry is denied** by others present on the scene; or
 - 6) You have articulable suspicion that absent immediate entry **serious bodily injury or death may result**.

4. Establishing control of scene

- a) Identify and secure potential **weapons** in the surroundings.
- b) **Separate the victim and the accused** when circumstances are appropriate.
- c) **Assess injuries** (including inquiry about possible internal injuries), administer first aid, and notify emergency medical services as necessary.
- d) **Identify all occupants and witnesses** on the premises.
- e) **Separate occupants and witnesses from the victim and accused** and keep them out of hearing range (to avoid compromising their witness status).
- f) **Maintain visibility and restrict mobility** of all persons present at the scene.

5. On-scene investigation

- a) Conduct an **investigation** using the same procedures used in any other on-scene criminal investigation.
- b) Attempt to **establish the existence of credible corroborative evidence**.
- c) Make specific note of and **document all statements made by the victim, accused and all witnesses**, particularly those statements that may be admissible as evidence as exceptions to the hearsay rule such as excited utterances, present sense impression and statements made for medical treatment.
- d) Determine if such **statements were made to the dispatcher** and take appropriate measures to **secure and preserve such evidence**.

- e) **Collect and preserve all physical evidence** reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene.
- f) Ensure that **photographs** are taken of visible injuries on the victim and of the crime scene. **Document** the location of any injuries that may result in potential bruising.
- g) **Collect all physical evidence** noted in reports and vouchered as in other criminal investigations.

6. Interviewing the Victim, Accused & Witnesses

Ensure the victim's safety and privacy by interviewing the victim in an area apart from the accused, witnesses, and bystanders if possible. Remember that what you see upon arrival may be misleading. The accused may appear calm and in control assuring you that there has only been a minor argument. The victim may be hysterical and unruly, or displaying a "flat affect" (no emotional at all). Try not to make presumptions. Gather evidence. Listen carefully before taking action.

Checklist for Interviewing the Victim and Witnesses

- ☐ **Interview** the victim and/or or witnesses (including child witnesses.)
- ☐ Ask about **previous** domestic violence **incidents**.
- ☐ Ask about **frequency and severity** of previous incidents.
- ☐ Do **not** tell what action you intend to take until all available information has been collected.
- ☐ Take down names, addresses and other **relevant information**.
- ☐ Determine whether the victim and any witnesses (including all child witnesses) allege facts that **constitute all of the elements** of assault or battery.
- ☐ Ask whether the victim and any witnesses are willing to **sign a statement** containing those facts.
- ☐ Ask about **past abuse or other crimes** to aid the law enforcement officer in evaluating the dangerousness of the accused.

- ☐ Proceed with the investigation **even in the absence of a statement** from both a victim and any witnesses (including child witnesses).
- ☐ Encourage the victim to **seek medical attention** for injuries that do not require emergency treatment at the scene.
- ☐ Ask about **injuries** of the victim that are **concealed** by clothing or otherwise not readily apparent.
- ☐ Advise the victim to have **photographs** taken if injuries appear later.
- ☐ Interview children in a manner appropriate to the **child's age**.
- ☐ If you have reasonable cause to suspect that a **child is neglected or abused** or observes the child being subjected to conditions that are likely to result in abuse or neglect, immediately report the circumstances to **Child Protective Services (CPS)**.

Interview Techniques for the Victim

- ✓ **Use supportive interview techniques** in questioning the victim.
- ✓ **In a soft, calm voice**, tell the victim, “Your safety is my first priority.” Even if the victim is drunk or belligerent, officers report that repeating this phrase often calms the victim and children present.
- ✓ If the victim is hysterical, **use calm, directive statements** and distraction techniques. Ask the victim, “How can I help?”
- ✓ Try to **lean toward the victim** in a non-threatening way while interviewing, to communicate interest. Ask for details with open-ended questions.
- ✓ Advise the victim of the **local domestic violence program** and services available.

Limited English Proficiency

- In cases where the accused, victim, or witnesses do not speak English, use a **neutral interpreter** when possible.
- **Use caution when using family and friends** and especially children, to provide interpreter services.

Checklist for Interviewing the Accused

- ☐ **Interview and record** the accused as fully as circumstances allow.
- ☐ Inquire about the **nature of the dispute**.
- ☐ Be alert to possible **incriminating statements**.
- ☐ **Protect the constitutional rights** of the accused.
- ☐ If the accused has fled the scene, **solicit information** as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.).
- ☐ Make **reasonable efforts to locate and interview the accused** as to any statements or evidence they may wish to provide prior to arrest or obtaining a warrant.

Interview Techniques for the Accused

- ☐ Interview the accused in a separate room or area from the victim.
- ☐ If the accused does not freely offer information, ask what happened.
- ☐ Document statements of the accused.
- ☐ Document in the incident the demeanor of the accused.
- ☐ Document the actions of the accused, especially if they are consistent with guilt. For example, if the accused does not want you to interview the victim, note that in the report. If the accused objected to your interviewing the children or taking pictures, document that.

Interviewing Children

- ✓ The interview must occur **away from the victim or accused**.
- ✓ Children **do not have to have been in the same room to have witnessed the assault**. Even if the other parties state that the children are upstairs asleep, chances are high that they were awakened by the incident and can give very helpful information about present and past abuse.
- ✓ Children may have negative stereotypes of law enforcement officers; **speak in a soft and calm** tone.
- ✓ **Get down to the child's level before talking**. If the children are in a room or closet with a closed door, first tell them you will count to five and then open the door.
- ✓ **Explain what you are doing**. School-age children should be told: *"Some of my questions will be easy to understand and some will be hard"*. Just say, *"What do you mean?"* or *"I don't get it,"* if you need to.
- ✓ **Ask open-ended questions to start**. In the midst of the crisis, it is hard for children to spontaneously provide a lot of information.
- ✓ By asking open-ended questions the child can explain circumstances which may not have occurred to you and give more accurate information.
- ✓ **Progress to specific questions**. If a child under seven is asked, *"Was there a weapon?"* he may answer *"No."* But he may answer *"Yes"* if asked *"Was there a gun?"*
- ✓ **Never bribe, threaten, coerce or bully children into answering you**. Inconsistencies can be probed by explaining that you are confused.

- ✓ **Use concrete examples.** Young children do not usually understand abstract concepts about time, height, weight or measurements. Instead of here, there, yesterday or tomorrow, use stable terms such as *in the front of the room, as tall as the sink, etc.*
- ✓ **Avoid the use of police jargon** like suspect, victim, assault, or witness.
- ✓ **Avoid passive voice** “*Was Mommy hit by Daddy?*” Instead use the active voice “*Did Daddy hit Mommy?*”
- ✓ **Avoid touching children.** If you want to comfort a child, ask first, “*Do you want a hug?*”

7. Enforcing Protective Orders and Bail Conditions

Ask the victim:

- a) Do you **have a protective order**?
- b) Are there **bail conditions**?
- c) Do you **have a copy** of the protective order or the bail document?
- d) Can you identify the county and court or magistrate from which the order or document was issued?

If the victim cannot produce a copy of the protective order then verify the existence of an order by accessing the statewide protective order database, NCIC, and identify the issuing county and court. Enforce all orders.

Where the respondent has been served with the protective order or has actual notice of the protective order and is in noncompliance with the order, follow the arrest provisions as summarized in the next section, **The Arrest Decision**.

If a valid protective order cannot be enforced because the respondent has not been notified of or served with the order, inform the respondent of the content of the order and make a reasonable effort to serve any available copy of the order upon the respondent. Give the respondent a reasonable opportunity to comply with the order, such as vacating the premises, surrendering firearms, etc. Once you have notified or served the respondent, and the respondent fails to comply with the order, enforce the order.

If verbal notice is given, notify the respondent of the following **minimum mandatory relief**:

- a) Order the respondent to **refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.**
- b) Inform the respondent that he or she is **prohibited from possessing any firearm or ammunition**, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense.
- c) Inform the respondent that the order is in full force and effect in **every county** of the state.
- d) Document the notification in writing to the circuit clerk's office.

Please Note: Verbal notification does not relieve the agency or officer from serving the order.

If the victim is aware of pending criminal charges against the accused and bail conditions, verify such information by contacting the local law enforcement department specified by the victim or the issuing court to verify the conditions of release on bail.

If you observe any violations of a known bail condition in cases of crimes between family or household members, including family or household members who are children, arrest the accused for violations of the bail conditions; which may include the presence of the accused at the residence of the victim.

8. Missing Persons Investigation - Domestic Violence

A law enforcement agency, under W. Va. Code §48-27-601, shall initiate a missing persons investigation if the agency:

1. Has possession of a valid protective order, or has notice of the existence of a protective order which is in effect, or has been expired for a period of less than thirty (30) days, and receives a report that a person protected by the order has been reported missing; or,
2. Receives information that at the time of disappearance the missing person was **subjected to domestic violence**.

An agency or department **cannot** have a policy delaying the beginning of an investigation of a missing person, which meets the protective order or domestic violence criteria.

Whereabouts of the alleged missing person cannot be released, if found, without expressed consent of that person.

- **Provide for the safety of the parties and remain at the location** when you are ordered to accompany one or both of the parties to obtain personal property or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties.

9. Follow-up Investigation - Domestic Violence

- Take photographs of injuries**
approximately **two days after** the incident to exhibit changes in injury as well as the long-term effects of abuse. Contact or meet the victim at a safe location if necessary, such as his or her work place.
- Obtain all available medical reports**
after receipt of medical release from the victim.
- Obtain a copy of 911 recordings** or other communications with police or emergency personnel.
- Interview victims and witnesses** who were physically or emotionally unable to be properly interviewed or to provide a statement at the time of the incident. Include the victim's family members, previous intimate partners of the accused, and as necessary interview family of the accused.
- Interview potential witnesses** (neighbors, co-workers, friends, etc.).
- Ascertain if the accused is on **parole or probation** and obtain the name and contact the parole or probation officer.

- g) Obtain all **jail telephone and communication logs** at the time of the incident.
- h) Conduct a complete NCIC check, and, if possible, a criminal history check of the suspect.
- i) Collect all types of **threatening communication** (sent by the perpetrator to the victim, family members and friends) to include: letters, cards, emails, text messages, and notes.

The Arrest Decision

Arrest the accused whenever arrest is authorized. If no arrest is made or if you arrest two or more persons for the same domestic violence incident, you must submit a written report setting forth the grounds for not arresting or for arresting both parties.

Officers cannot threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests or intervention by law enforcement by any party.

Arrest is authorized in the following circumstances:

- a) When there is **probable cause** to believe that the accused has committed a felony.
- b) When you **observe the commission of a felony or a misdemeanor**.
- c) When you **observe the violation of a valid protective order**, including the presence of the accused at a location prohibited by the protective order; provided the provided the accused was served with the order or had actual notice of the order and its contents.
- d) When you **observe any violation of a condition of bail, probation or parole**, including the presence of the accused at the residence of the victim in violation of the condition set in cases of crimes between family members.
- e) When the accused is alleged to have committed **domestic assault or domestic battery or the violation of a valid protective order**.

You Have the Authority to Arrest the Accused When:

You have observed **credible corroborative evidence** that the offense has occurred **or**:

- a) Have from the victim or a witness, **verbal or written allegation of facts** constituting a violation of a domestic assault or domestic battery or violation of a valid protective order.
- b) When a **misdemeanor or felony** has been committed and you or another person obtains or has previously obtained an arrest warrant.
- c) When a **capias has been issued**, or when a circuit judge has signed an attachment order.

The following factors should **NOT be considered in making the Arrest Decision:**

- a) The marital status of the parties.
- b) The ownership or tenancy rights of either party.
- c) Verbal assurances that the violence will stop.
- d) A claim by the accused that the victim provoked or perpetuated the violence.
- e) Speculation that the victim or witnesses will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor).
- f) The disposition of any previous police calls involving the same victim or accused.
- g) Speculation that the arrest may not lead to a conviction.
- h) The existence or nonexistence of a current protective order (except insofar as the violation of the order requires arrest).
- i) Concern about reprisals against the victim.
- j) Adverse financial consequences that might result from the arrest.

- k) That the incident occurred in a private place.
- l) The racial, cultural, social, political, or professional position or sexual orientation of either the victim or the accused.
- m) Criminal history of the victim.

It is your or prosecuting attorney's responsibility to decide whether an arrest should be made unless you are required to make an arrest for violation of a valid protective order or a violation of the terms and conditions of bail, probation or parole on a charge of a crime against a family or household member. **You should not consider the victim's opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the state's action, not the victim's action.**

Federal Firearm Provisions

The Gun Control Act of 1968, The Violence Against Women Act (1994)

- *The Gun Control Act of 1968 (18 U.S.C. Section 221(g)*, states that it is still unlawful for a certain class of person to possess firearms and that any such possession shall be a felony.

Persons in this class are:

- a) Convicted felons.
- b) Users or persons addicted to controlled substances.
- c) Persons adjudicated as mental defective or have been committed to any mental institution.
- d) Non-citizens who are in the U.S. illegally.
- e) Persons dishonorably discharged from the Armed Forces.

Firearms and Domestic Violence

- ✓ Seize all firearms, ammunition, and any other weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence.
- ✓ Seize weapons that are in plain view, or is discovered pursuant to a consensual search, or is necessary for the protection of yourself or other persons.
- ✓ Seize all firearms and ammunition possessed in violation of a protective order prohibiting possession of a firearm.

ct (1994), and The Omnibus Consolidated Appropriations Act of 1997.

- f) Persons who have renounced their citizenship.
- *The Omnibus Crime Bill of 1994*, a subsection of which is the Violence Against Women act, amended the *Gun Control Act* by adding two more classes of person to the list of person prohibited from possessing firearms. They are:
 - g) A person who is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate with violence.
 - h) A person who has been convicted in any court of a misdemeanor crime of domestic violence.

Predominate Aggressor

If you receive complaints of domestic or family violence from two or more opposing persons, evaluate each complaint to determine who was the predominate aggressor. If you determine that one person was the predominate aggressor, **arrest only the predominate aggressor.**

In determining whether a person is the predominate aggressor you should consider:

- a) Prior complaints of domestic or family violence.
- b) The relative severity of the injuries inflicted on each person.
- c) The likelihood of future injury to each person.
- d) Whether one of the persons using reasonable force acted in self-defense.
- e) Initial physical contact alone does not determine predominate aggressor.

- **Dual arrests are discouraged.**
- **Dual arrests should be the exception and not the rule.**

Some Considerations in Determining the Predominate Aggressor

- Fear – Who talks and acts scared?
- Body Language – Who displays an aggressive stance?
- History of Abuse – Consider medical records, 911 tapes, prior police reports, protective orders, etc. *Examine the paper trail.*
- Excited Utterances – Statements of adults and children blurted out at the scene while they are still upset.

- Injuries – Who is injured, and are the injuries *defensive or offensive*?
- Crime Scene – Observe smashed furniture, broken glass, etc. *Whose objects are broken or destroyed?*

The Overlap of Federal Law

- The **possession of a firearm by a person subject to a valid protective order** is a violation of federal law.
- The crossing or causing the **crossing of a state line or territory or tribal boundary to violate a valid protective order or to commit domestic violence** is violence of a federal law.

Effectuating the Arrest

Persons arrested for domestic violence shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed.

The risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If the accused has fled the scene, initiate procedures to pursue and apprehend the accused as promptly as possible if the presence of the accused in the vicinity represents a continuous threat to the safety of the victim or other members in the household. If a warrant is necessary, obtain and execute the warrant as soon as practical.

When the accused is a minor (under 18 years of age), the same provisions are fully applicable, except that the law enforcement officers should arrest and process the juvenile pursuant to W. Va. Code §49-5-1 et. seq.

Procedure when Arrest is not Made

If an arrest is not made:

1. **Explain to the victim** the reasons that an arrest is not being made.
2. **Advise the victim of the applicability of criminal laws**, procedures for filing a criminal complaint, the availability of a petition for a protective order, the procedures for filing a petition, and the remedies an order may contain.
3. **Encourage the victim to contact the nearest available domestic violence program** for information regarding services available to victims of domestic violence.
4. Inform the victim that you will **provide transportation** for or facilitate transportation of the victim to a shelter or the appropriate court when reasonable cause exists to believe that the victim suffered or is likely to suffer physical injury.
5. In the absence of an arrest, you should remain neutral and be concerned primarily with maintaining the **peace and safety** of those persons present.

✓ When you have a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, report the suspicion to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.

Other On-Scene Assistance to Victims and Dependents

- **Do not leave the scene** of the incident **until the situation is under control** and the likelihood of immediate violence has been eliminated.
- **Stand by** for a reasonable period of time while victims or other persons desiring to leave gather necessities for short-term absences from residence, such as clothing, medication, and necessary documents.
- **Notify the victim** orally or in writing of the availability of a local domestic violence program, crime victim compensation fund, and other services in the community, and civil and criminal remedies such as: the right to file for a protective order and the right to file a criminal complaint if there is a violation of an existing protective order.
- If an arrest is made or an arrest warrant obtained:
 - a) Advise the victim of what **will happen next**, including the probability that the accused will be in custody for only a short period of time.
 - b) **Obtain** from the victim information to be included in the arrest report indicating any **special conditions of bail** that should be requested at the initial appearance before the magistrate (i.e., places where the accused should be specifically prohibited from appearing).

Elderly Victims or Physically Dependent Victims

When a victim of domestic violence is elderly or physically dependent or incapacitated adult, the accused is the sole caretaker and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of an elderly or physically or incapacitated adult, and the victim can no longer provide care (for example, when the victim is hospitalized):

- a) Attempt to provide and secure appropriate care and assistance for the well-being of the elderly or physically dependent or incapacitated adult.
- b) If there is no one available to assist the elderly or physically or incapacitated dependent person, or if the elderly or physically or incapacitated dependent person appears not to be mentally alert, make an emergency referral to Adult Protective Services. Remain at the residence until the Adult Protective Services worker arrives, or transport the elderly or physically or incapacitated dependent person to a medical facility, or other appropriate place where the elderly or physically or incapacitated dependent person can wait for the APS worker.
- c) If applicable, advise the elderly or physically or incapacitated dependent person of the availability of protective services through Adult Protective Services.

Child victims and dependents

When the victim of abuse is a minor child:

- a) Arrest the perpetrator if you observe the commission of a crime.

- b) Report to Child Protective Services, as required by W. Va. Code §49-6A-2 et seq.
- c) If the child is physically injured, provide for or facilitate the transportation of the child to the nearest hospital for treatment.
- d) Provide notification, to an adult caretaker of the child who is not the perpetrator of the abuse.

If the victim is the sole caretaker of a child and can no longer provide care (for example, when the victim is hospitalized) and is not incapacitated, consult with the victim about arrangements for the child. **If the accused is arrested and was the sole caretaker of a child or if both caretakers are arrested, contact Child Protective Services (CPS).** CPS will determine whether there is a responsible relative who can care for the child. **Remain with the child until CPS arrives.**

Considerations when Children are Present at a Domestic Violence Scene

- Recognize the variety of ways that children are exposed – directly and indirectly.
- Ask where the children were, where they are now, and if they were hurt.
- Speak directly to the children, at eye level, to assure they are okay and to reassure them of their safety.
- Recognize that children may be responding to both the current incident and their experiences of past incidents prior to your involvement.

Licensed Domestic Violence Program Contact Numbers

County Resources

Branches, Inc.

(Cabell, Lincoln, Mason, Putnam, Wayne)
1-888-538-9838 Voice/TTY

Family Crisis Center

(Grant, Hampshire, Hardy, Mineral, Pendleton)
1-800-698-1240 Voice
304-788-6061 Voice/TTY

Family Crisis Intervention Center

(Calhoun, Jackson, Pleasants, Ritchie,
Roane, Tyler, Wirt, Wood)
1-800-794-2335 Voice
1-800-787-3224 TTY

Family Refuge Center

(Greenbrier, Monroe, Pocahontas)
1-866-645-6334 Voice
304-645-6334 Voice/TTY

HOPE, Inc.

(Doddridge, Gilmer, Harrison, Lewis, and Marion)
304-367-1101 Voice

The Lighthouse

(Brooke, Hancock)
(304) 797-7233

Rape and Domestic Violence Information Center

(Monongalia, Preston, Taylor)
304-292-5100 Voice/TTY

S.A.F.E.

(McDowell, Mercer, Wyoming)
1-800-688-6157 Voice
304-436-8117 Voice/TTY

Shenandoah Women's Center

(Berkeley, Jefferson, Morgan)

304-263-8292 Voice/TTY

Tug Valley Recovery Shelter

(Mingo, Logan)

1-800-340-0639 Voice

304-235-6121 Voice/TTY

Women's Aid in Crisis

(Barbour, Braxton, Tucker, Randolph, Upshur,
Webster)

1-800-339-1185 Voice/TTY

Women's Resource Center

(Fayette, Nicholas, Raleigh, Summers)

1-888-825-7836 Voice

304-255-2559 Voice/TTY

YWCA - Family Violence Prevention Program

(Brooke, Hancock, Marshall, Ohio, Wetzel)

1-800-698-1247 Voice/TTY

YWCA - Resolve Family Abuse Program

(Boone, Clay, and Kanawha)

1-800-681-8663 Voice/TTY

State Resources

WV Coalition Against Domestic Violence

304-965-3552

WV Foundation for Rape Information and Services

304-366-9500

WV Division of Justice and Community Services

304-558-8814

WV Regional Community Policing Institute
304-766-3347

**WV US Attorney's Offices – Victim/Witness
Assistance Units:**

Northern District –
304-234-0100

Southern District –
304-345-2200

WV Crime Victims Compensation Fund
304-347-4850

WV Prosecuting Attorneys Institute
304-558-3348

**WV Supreme Court of Appeals
Administrative Office**
304-558-0145

National Resources

National Domestic Violence Hotline
800-799-SAFE
TDD 800.787.3224
www.ojp.gov/vawo/hotline.htm

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